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IN THE

Supreme Court of the United States

OCTOBER TERM 1956

No. ~~1004~~ 129

PAUL DAYTON, *Petitioner*

vs.

WHITNEY GILLILLAND, PEARL CARTER PACE, and HENRY J. CLAY, constituting the Foreign Claims Settlement Commission of the United States.

and

GEORGE M. HUMPHREY, as the Secretary of the Treasury, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
PETITION FOR WRIT OF CERTIORARI	1
Opinion below	2
Jurisdiction	2
Question presented	2
Statement	2
Reasons for granting the writ	7
I	7
II	11
Conclusion	18
Appendix	1a

DECISIONS AND AUTHORITIES

Aladar Sege, Foreign Claims Settlement Commission Decision No. 1467	7, 11, 16
Blagge v. Balch (1896), 162 U.S. 439	10
Board of Governors v. Agnew (1946), 321 U.S. 288	12
Cole v. Young (1956), 351 U.S. 536	13
Comegys v. Vasse (1828), 26 U.S. 216	10
Crowell v. Benson (1932), 285 U.S. 22	17
DeVegvar v. Gillilland (1955), 97 App. D.C. 126, 228 F.2d 640, cert. denied, 350 U.S. 994	3, 10
Estep v. United States (1945), 327 U.S. 114	13
Garfield v. Goldsby (1908), 211 U.S. 249	17
Great Western Insurance Co. v. United States (1884), 112 U.S. 193	12
Peters v. Hobby (1955), 349 U.S. 331	13, 17
Philadelphia Co. v. Stimson (1911), 223 U.S. 605	12
School of Magnetic Healing v. McAnnulty (1902), 187 U.S. 94	12
Shields v. Utah Idaho R. Co. (1938), 305 U.S. 48	12
Simmons v. United States (1955), 348 U.S. 288	13
Stark v. Wickard (1943), 321 U.S. 288	12, 17
United States v. Ferreira (1851), 13 How. 39	12
United States v. Jones (1949), 336 U.S. 641	13

Page

United States v. Morton Salt Co. (1950), 338 U.S. 632 13
United States v. Weld (1888), 127 U.S. 51 12
Utah Fuel Co. v. Coal Commission (1939), 306 U.S. 56 12
Williams v. Heard (1891), 140 U.S. 279 10
Work v. Louisiana (1925), 269 U.S. 250 12

STATUTES, ETC.

Congressional Record, Vol. 95, pp. 8837, 8841, 8846, 8854, 8855, 8979, 8980 9-10
House Report 770, 81st Cong. 8
International Claims Settlement Act of 1949, 64 Stat. 12 et seq., 22 U.S.C. 1621 et seq. 4, 11
Section 4(a) 11, 14
Section 4(h) 2, 3, 12, 18
Public Law 285, 84th Cong., 69 Stat. 562 et seq. 7
Senate Report 800, 81st Cong. 8
Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors from September 14, 1949 to March 31, 1955, Foreign Claims Settlement Commission (1955) 14
Yugoslav Claims Agreement (United States and Yugoslavia) July 19, 1948, 62 Stat. 2658 et seq. 8
Article 1(c) 8
Article 7 8

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia entered in the above-entitled case on February 14, 1957.

OPINION BELOW

No opinion was filed in the District Court. The opinion of the Court of Appeals (R. 64) is not yet officially reported; it is printed as an appendix to this petition.

JURISDICTION

The judgment of the Court of Appeals was entered on February 14, 1957 (R. 66). The jurisdiction of this Court is invoked under Section 1254(1) of the Judicial Code (28 U.S.C. 1254(1)).

QUESTIONS PRESENTED

Does Section 4(h) of the International Claims Settlement Act of 1949 (22 U.S.C. 1623(h)), which declares that all decisions of the Foreign Claims Settlement Commission shall be "final and conclusive on all questions of law and fact and not subject to review . . . by any court by mandamus or otherwise," bar judicial intervention to prevent the Commission from depriving the petitioner of his property right in the Yugoslav Claims Fund by committing unauthorized acts and deciding petitioner's claim in an arbitrary and capricious manner?

STATEMENT

This is an action against the members of the Foreign Claims Settlement Commission of the United States and the Secretary of the Treasury of the United States seeking:

(1) a judgment declaring the Final Decision No. 1371 of the Commission, contrary to law and null and void;

(2) a mandatory injunction requiring the Commission to declare the same as ineffective, and to decide petitioner's claim in accordance with the facts and the law;

(3) a judgment declaring Section 4(h) of the Act unconstitutional;

(4) an injunction restraining the Secretary of the Treasury, until final disposition of the petitioner's claim by the Commission, from making payments out of the Yugoslav Claims Fund which would reduce the total amount in such Fund to a sum less than $1,504,624.78; and

(5) for such other and further relief as to the Court may seem just and proper.

The respondents answered and thereafter, on April 5, 1956, moved to dismiss the complaint on the ground that the District Court lacked jurisdiction of the subject matter of this action, since the decisions of the Commission are final and conclusive and not subject to judicial review. In light of the decision of the court below in *DeVegvar* v. *Gillilland, et al* (1955) 97 App. D.C. 126, 228 F. 2d 640, cert. denied, 350 U.S. 994, petitioner moved at the hearing on the motion to dismiss, to amend his complaint to set forth the constitutional issues held to be lacking in the *DeVegvar* case. The order of the District Court of May 2, 1956 granted respondents' motion to dismiss on the ground that the court lacked jurisdiction over the subject matter of this action. The Court also refused to permit petitioner to amend his complaint.

The petitioner noted an appeal from this judgment on May 7, 1956, and on May 8 filed a motion for a temporary restraining order with the Court of Appeals requesting that the Secretary of the Treasury be temporarily adjoined, pending appeal, from making payments out of the Yugoslav Claims Fund. The court below denied this motion on May 14, 1956; how-

ever, Judge Wilbur K. Miller dissented and moved that the motion be reheard by the Court sitting en banc. A majority of the Court was not in favor of such a rehearing.

The appeal was argued on January 23, 1957 and the judgment of the District Court was affirmed by the Court of Appeals on February 14, 1957.

The amended complaint and proposed amendment thereto are based on the following facts:

On July 18, 1948, the United States and Yugoslavia executed an agreement whereby the Secretary of the Treasury unblock certain Yugoslav assets in the United States, and Yugoslavia, on August 21, 1948, paid $17,000,000 therefrom into the U. S. Treasury, in full settlement and discharge of all claims of the United States and of its nationals to be distributed to the United States nationals whose property had been nationalized or otherwise taken by Yugoslavia.

To implement this agreement, Congress enacted the International Claims Settlement Act of 1949, as amended (22 U.S.C. 1621, et seq.) (hereinafter referred to as the "Act"). This Act established the International Claims Commission (redesignated the Foreign Claims Settlement Commission in Reorganization Plan No. 1 of 1954, and hereinafter referred to as the "Commission"), to receive, examine and render final decisions with respect to the noted claims.

The petitioner, a former citizen of Czechoslovakia, filed a claim with the Commission. He proved that he became a U.S. citizen on July 25, 1946, that he had had property in Yugoslavia, and that this property was subject to the nationalization laws of December, 1946, and April, 1948. Yugoslavia opposed this claim and

stated that the petitioner's property was taken before he became a United States citizen. They asserted that this taking had been effected by Judgment No. 965/45 of the Military Court of Maribor. However, Yugoslavia did not produce the judgment in question and the only evidence presented to the Commission was a certificate of notation taken from the penal register of another Yugoslav military court.

The petitioner contested the existence of this judgment and the jurisdiction of the Military Court, and proved that there were gross irregularities surrounding the issuance of this alleged judgment. He also established the alteration and fabrication of this and other documents forwarded to the Commission by Yugoslavia. He further established that the Military Court had no jurisdiction over civilians and that the judgment was rendered *in absentia*, pursuant to an executive order, and not a law, concerning the establishment of military courts, issued by the Supreme Commander of the Partisans Forces.

The Commission never obtained the alleged judgment from Yugoslavia for its own scrutiny. In its proposed decision of October 15, 1954 (R. 52-61) denying petitioner's claim, the Commission changed the very content of the certificate forwarded by Yugoslavia by adding thereto that the purported judgment had been issued "under the Yugoslav Enemy Property Law of November 21, 1944 (Official Gazette No. 2, February 6, 1945)."

Thereafter, petitioner filed his objection to the proposed amendment. During the course of the hearing thereon it was again contended that the documents relied upon by the Commission as proof of the confis-

cation of petitioner's property were not the records which were on file in Yugoslavia. At the conclusion of the hearing, the examiner stated:

> "We are, however, with respect to official documents, especially court decisions, limited to what the Yugoslav Government will give us. We would have no way to controvert the evidence furnished by the Yugoslav Government unless proper evidence is received in some other way.
> "There is a possibility, as you suggest, that some of the documents here may have been tampered with and the Commission may not have received true copies. . . ."

On December 30, 1954 the Commission adopted the proposed decision as its final decision (R. 62-63). Thereafter, under the mistaken impression that the Commission's affairs with respect to Yugoslav claims were completed, Yugoslavia permitted petitioner to obtain theretofore withheld official records which show the facts surrounding his claim to be a complete contradiction of the Commission's findings.

The petitioner's amended complaint and proposed amendment thereto (R. 1-8; 14-23) charged in detail that the Commission:

1. Made certain unauthorized assertions that are not supported by any evidence before the Commission or in the record, and which when added to a self-serving statement presented to the Commission by Yugoslavia, gave *in absentia* proceedings before a military court in Yugoslavia, an appearance of regularity, and was used as the sole basis for denying petitioner's claim;

2. Relied on this self-serving statement and treated it as an official record to destroy petitioner's claim, in

complete disregard of the mandate and intent of Congress; and

3. Abused its discretion in deciding petitioner's claim and that of claimant *Aladar Sege*, Docket No. 1467, Decision 1546, cases identical on their facts, in an arbitrary manner resulting in no award to petitioner and an award to claimant Sege.

Accordingly, the determination of the claim was in violation of the express provisions of the Act and deprived petitioner of his property rights in the Yugoslav Claims Fund without due process of law.

REASONS FOR GRANTING THE WRIT

I

In its decision of February 14, 1957, the United States Court of Appeals for the District of Columbia decided a question of general importance which has not been and should be settled by this Court: the existence of property rights of claimants under the trust fund type of international settlement agreement. The Commission, pursuant to Public Law 285, 84th Cong. (69 Stat. 562 et seq.) is presently examining claims for property losses suffered at the hands of Rumania, Hungary, Russia, and Bulgaria, and negotiations are being carried on by the Department of State with respect to claims against other countries. An exceedingly large number of persons have already been and will be affected by the decisions of the Commission. The amount of money involved in these agreements totals in the hundreds of millions of dollars. There is an important and urgent need for a decision by this Court as to whether those American citizens on whose behalf trust fund settlement agreements with foreign powers have been or are to be entered, have property rights in

the funds provided under such agreements or receive payments thereunder as a matter of grace.

Under the settlement agreement between the United States and Yugoslavia, the money paid into the Treasury of the United States by Yugoslavia is to be distributed by the United States among the claimants (Art. 7) and any balance remaining after the adjudication of all claims is to be returned to Yugoslavia (Art. 1(c)). All costs of adjudication are to be charged against the claimants.

It is clear that this money was not paid to the United States as a nation, that it never became United States money, and that the United States agreed to act only as the trustee of this fund for the benefit of all claimants. This contention was emphasized, acknowledged and agreed to by both Houses of Congress throughout the legislative history of the implementing Act.

In Senate Report 800, 81st Cong., Senator Green, stated (pp. 3-4):

> "... This sum has been deposited and covered into the Treasury Department as a trust fund to be paid out to the respective claimants under the aforesaid agreement ...
>
> "... The intent of the Agreement and the bill is to provide compensation for eligible American property interests nationalized or otherwise taken by the Government of Yugoslavia. ...
>
> "... Yugoslavia has a reverter interest if the total valid claims are less than the sum of $17,000,000. ..."

On the House side, Congressman Ribicoff, the author of the bill, stated in H. Rept. 770, 81st Cong. (p. 2):

> "... The bill would provide a procedure and a mechanism whereby the money received by the

United States in pursuance of the agreement can be apportioned among the claimants. . . ."

The House floor debate is replete with references to the trust nature of this Fund. That this is the money of the claimants and Yugoslavia, and not of the United States, and that the United States is only to act as trustee of the money, is made unequivocally clear in the colloquy between Rep. Beckworth and Rep. Ribicoff (95 Cong. Rec. 8837):

> "Mr. Beckworth: Who has title to this money?
>
> Mr. Ribicoff: The United States holds this money as Trustee, under the settlement of July 18, 1948, between the executive branch of our Government acting by the Secretary of State, Mr. Marshall, and the Government of Yugoslavia. The $17,000,000 was paid to the United States Treasury in trust for the claimants of the United States. It does not belong to the United States.
>
> Mr. Beckworth: Do you mean the United States Government does not have title to the money?
>
> Mr. Ribicoff: No; it does not have title. It cannot utilize that money for the general purposes of the Nation.
>
> * * * * *
>
> Mr. Ribicoff: We must not forget the character of the funds out of which the individual awards are to be made. It is not a fund owned by this Government. There is no public title to it. . . . The United States, in effect, holds these funds in escrow. Another way is to say that it is, for the period pending the payment of all awards, trustee for all claimants, including itself, and for Yugoslavia as well, for the residual funds will go back to Yugoslavia. The funds are not a prize over the sharing of which sundry American claimants will contest with each other or against the United States. Residual title to the fund belongs to Yugoslavia. It will get the balance, if there is a bal-

> ance, after all awards are paid. Essentially the individual claims will still lie against Yugoslavia. This is different from a mixed claims settlement, in this respect only in that Yugoslavia has posted the money in advance and has authorized the United States by its own devices to determine liability in individual cases."' (95 Cong. Rec. 8841).

(See also 95 Cong. 8846, 8854, 8855, 8979, 8980).

In the light of the clear intention of the parties to the Agreement, and of the Congress, the Yugoslav Claims Fund is a trust fund, and the United States is its trustee for the benefit of all claimants. The seized property of the claimants was in effect converted into this money by this Agreement and paid by Yugoslavia into the United States Treasury, only as a deposit.

This Court has had occasion to consider agreements under which the United States assumed the obligation of satisfying the claims of its citizens against a foreign power, and appropriated the money necessary to pay such claims. *Blagge* v. *Balch* (1896) 162 U. S. 439. And agreements under which a foreign power paid a lump sum to the United States as a nation for injuries caused its citizens. *Comegys* v. *Vasse* (1828) 26 U.S. 193 and *Williams* v. *Heard* (1891) 140 U.S. 529. But this Court has not been called upon to consider agreements wherein the United States has accepted money only as a trustee.

The decision of the Court of Appeals, appended hereto, neither analyzed nor discussed petitioner's foregoing contentions, but contented itself with relying on *DeVegvar* v. *Gilliland, supra*. We submit that the *DeVegvar* case is not controlling of the issues in this case since in that case there was no attempt to assert a property right in the Yugoslav Claims Fund, or a

denial of such property right by the Commission by unauthorized and arbitrary actions in violation of the provisions of the implementing Act. This Court should define the nature and character of the Yugoslav Claims Fund and the rights of claimants therein.

II

The International Claims Settlement Act of 1949, *supra*, is an important Federal Law establishing the Foreign Claims Settlement Commission to render decisions which are final and conclusive upon all questions of fact and law in claims filed with that body. The scope of the Commission's authority has not been but should be decided by this Court.

Petitioner charged in his amended complaint and proposed amendment that in examining his claim, the Commission committed the following unauthorized acts:

(a) Made assertions unsupported by any evidence before the Commission or in the record, which when added to a self-serving statement presented to the Commission by Yugoslavia, gave *in absentia* proceedings before a military court in Yugoslavia an appearance of regularity, and was used as the sole basis for denying Petitioner's claim.

(b) Relied on this self-serving statement of treating it as an official record to destroy petitioner's claim in complete disregard of the direction of the Act (Sec. 4(a), 22 USC 1623(a)) that "(2) the applicable principles of international law, justice and equity," should be applied.

(c) Decided Petitioner's claim and that of claimant *Aladar Sege*, *supra*, cases identical on their facts,

in an arbitrary and capricious manner resulting in no award to petitioner and an award to claimant Sege.

In its decision, the Court of Appeals did not pass upon these charges, and left undefined the scope of authority granted to the Commission by the Congress.

The Commission is an administrative agency exercising quasi-judicial powers. It was created by an Act of Congress and derives its entire power, authority and jurisdiction from that Act. *United States* v. *Ferreira* (1851), 13 How. 39, 45; compare *United States* v. *Weld* (1888), 127 U.S. 51 with *Great Western Insurance Co.* v. *United States* (1884), 112 U.S. 193. Accordingly, in order to be valid any action taken by the Commission in connection with a claim before it must find justification in the provisions of the Act itself. *School of Magnetic Healing* v. *McAnnulty* (1902), 187 U.S. 94, 108; *Philadelphia Co.* v. *Stimson* (1911), 223 U.S. 605, 621. If the Commission takes action not authorized by the Act, such action is wholly void, of no legal significance or effect, and the courts of the United States may, through the exercise of their general equitable powers, protect persons and property rights from any injury which might otherwise result from such unlawful action. *Work* v. *Louisiana* (1925), 269 U.S. 250; *Shields* v. *Utah Idaho R. Co.* (1938), 305 U. S. 177; *Utah Fuel Co.* v. *Coal Comm'n* (1939), 306 U.S. 56; *Stark* v. *Wickard* (1943), 321 U.S. 288; *Board of Governors* v. *Agnew* (1946), 329 U.S. 441.

The respondents, however, argued that because Sec. 4(h) of the Act (22 USC 1623(h)) provides that the decision of the Commission shall be final and not subject to judicial review, the Commission is empowered to proceed to a determination of the validity and amount of claims in any manner it chooses, even in

complete disregard of the standards prescribed by Congress in the Act, and that no court of this country can do anything about it.

It is well settled that there is a distinction between judicial review and judicial intervention to keep administrative agencies within their statutory authority. *Estep* v. *The United States* (1945), 327 U.S. 114; *United States* v. *Jones* (1949), 336 U.S. 641; *United States* v. *Morton Salt Co.* (1950), 338 U.S. 632; *Simmons* v. *United States* (1955), 348 U.S. 397; *Peters* v. *Hobby* (1955), 349 U.S. 331; *Cole* v. *Young* (1956), 351 U.S. 536.

The petitioner prayed for judicial intervention based on the following facts:

1. The Government of Yugoslavia submitted a statement which was read into the record by the Commission's counsel (Transcript of Hearings before the Commission). It says:

> "By the sentence pronounced by the Military Court of the Maribor Military District, Maribor Sod, 956-45-II of August 18, 1945, the entire movable (personal) property and real property of Paul Deutsch, a national of Czechoslovakia, and industrialist of Dvore Cralove/Laba, in particular his movable (personal) property in the companies 'Ma-Va.', Inc.), Belgrade, 'Nopocretnoste' A.D. ('real estate,' Inc.), Belgrade, and 'Industrija Drveta,' A.D. ('timber,' Inc.), Visegrad, had been confiscated. This decision became final and valid August 18, 1945."

This certificate was issued by the Military Court of Ljubljana, which is a court other than the court allegedly issuing the judgment. The Commission in its findings stated that:

> "It appears from official Yugoslav records that on August 18, 1945 judgment (No. 965/45) was entered against both claimants (and others) by the Military Court of the Maribor Military District, Yugoslavia, in proceedings instituted *in absentia* as to the claimants, under the *Yugoslav Enemy Property Law of November 21, 1944* (Official Gazette No. 2, of February 6, 1945), the purported effect of which judgment was that all of the claimant's property in Yugoslavia, including, specifically, their interests in Mariborska, was declared confiscated for the benefit of the Government of Yugoslavia." (underscoring added)

In the verbatim insertion in the record, there is no reference to the underscored portions of the foregoing quotation. These references were omitted by Yugoslavia for obvious reasons. Their inclusion would invite the Commission's scrutiny of the proffered certificate. However, for reasons undisclosed by the record, the Commission itself supplied these references and the *in absentia* proceeding before a Yugoslav military court were thereby given the appearance of propriety. The Commission's inclusions further made it appear that the Commission had passed upon the validity of records, while, in fact, it had blindly relied upon them to destroy the petitioner's claim.

2. Under Sec. 4(a) of the Act (22 USC 1623(a)), Congress directed the Commission to apply the applicable principles of international law, justice and equity.

The Commission in its report entitled "Settlement of Claims by the Foreign Claims Commission of the United States and its predecessors from September 14, 1949 to March 31, 1955," acknowledged and recited the applicable principles of international law as well as

domestic law in respect to foreign judgment it intended to follow (p. 208):

> "... [I]t [the Commission] will allow full faith and credit to decrees of Yugoslav courts having appropriate jurisdiction, and in the absence of evidence that the decree was otherwise invalid."

In the proceedings before the Commission the jurisdiction of the military court was questioned and the validity of the *in absentia* proceedings attacked. The judgment was not issued pursuant to Enemy Property Law, but under an executive order, issued in May, 1944, by the Supreme Commander of Partisans Forces. At that time the Partisan Forces were not recognized as a Yugoslav military force. Their commander was without any legislative power as a matter of Yugoslav constitutional law. The Commission answered:

> "Here again, the Commission must find that the validity or propriety of these proceedings does not control the determination of these claims ... The Commission cannot, without doing violence to the Agreement and injustice to many claimants, adopt a 'floating' test for establishing the date of taking which would vary from case to case, as the peculiar 'equities' of each case might incline it."

The Commission did just the opposite of the mandate of Congress. Instead of applying the principles of international law and scrutinizing the certificate to see whether the court had jurisdiction or whether there were other irregularities, the Commission, in order to give full force and effect to this certificate, called it an "official document" and added a few bolstering assertions of its own.

3. The Commission decided claims in an arbitrary and capricious manner. In order to aid the Court in

understanding the capricious nature of the Commission's actions, it will be necessary to discuss a claim decided by the Commission in favor of claimant *Aladar Sege, supra.* In that case claimant Sege was convicted *in absentia* by a regular criminal court for treason prior to his becoming a United States citizen. Petitioner was convicted *in absentia* by a military court, which, as a rule, could not have had jurisdiction over a civilian residing in the United States since 1941. Under the alleged court decree, the property of claimant Sege, like the property of petitioner was confiscated. Both the property of claimant Sege and petitioner were subject to the Nationalization Law of December 6, 1946. However, unlike petitioner who became a United States citizen prior to the enactment of the noted law, claimant Sege became a United States citizen after its enactment. Also, unlike petitioner, claimant Sege was granted an award for the loss of his property.

The difference in the results reached in two identical claims was that the Commission, in deciding petitioner's claim, held that petitioner's property was taken by Yugoslavia as of the date it was declared confiscated by the military court. However, in Sege's claim, the Commission held that his property was not taken until the confiscation decree was carried out by the Yugoslav courts. This was the only way to avoid the effect of the Nationalization Law.

How the Commission reached these diametrically opposite conclusions in these identical cases, and why, cannot be gleaned from the decisions.

This Court has stated in discussing the power of the courts to keep administrative agencies, within the bounds of the authority granted by the act creating

them that ". . . there is no place in our constitutional system for the exercise of arbitrary power . . ." *Garfield* v. *Goldsby* (1908), 211 U.S. 249, 262. "When Congress passes an act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted. This permits the courts to participate in law enforcement entrusted to administrative bodies only to the extent necessary to protect justifiable individual rights against administrative action fairly beyond the granted powers." *Stark* v. *Wickard, supra.* "With respect to them [administrative agencies], the function of the court is not one of review but essentially of control—the function of keeping them within their statutory authority." (Mr. Justice Brandeis dissenting in *Crowell* v. *Benson* (1932), 285 U.S. 22, 29). "Agencies, whether created by statute or executive order, must, of course, be free to give reasonable scope to the term conferring their authority. But they are not free to ignore plain limitations on that authority." *Peters* v. *Hobby, supra,* at p. 345.

From the foregoing it is clear that a legislative prohibition against "review by any court" does not bar judicial action, if a decision was not made in accordance and in compliance with the provisions of the statute in question, or is in violation of constitutional rights. We submit that Congress did not empower the Commission to make assertions for which there is no basis in the evidence or in the record before the Commission. We further submit that the Commission was without authority to ignore the applicable principles of international law and to grant full force and effect to any paper submitted to it by Yugoslavia. And we finally submit that the Commission, notwithstand-

ing the provisions of Sec. 4(h) of the Act (22 USC 1623(h)) is not entitled to reach determinations with respect to claims in an arbitrary and capricious manner.

CONCLUSION

For the foregoing reasons the petition for writ of certiorari should be granted.

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